

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ANGELA M.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND E.K.,
Appellees.

No. 2 CA-JV 2019-0096
Filed June 19, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20170208
The Honorable Dean Christoffel, Judge Pro Tempore

AFFIRMED

COUNSEL

Emily Danies, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Autumn Spritzer, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel, Tucson
By Jillian F. Aja
Counsel for Minor

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 Angela M., mother of E.K., born in September 2014, appeals from the juvenile court's July 2019 order terminating her parental rights on the grounds of neglect, A.R.S. § 8-533(B)(2), and time in court-ordered care, § 8-533(B)(8)(c).¹ Angela argues there was insufficient evidence to support the statutory grounds for severance and the finding that termination of her rights was in E.K.'s best interests. We affirm.

¶2 Before it may terminate a parent's rights, the juvenile court must find by clear and convincing evidence at least one statutory ground for severance, and by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm such an order unless we conclude that no reasonable trier of fact could find the grounds for termination established under the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). In reviewing the court's order, we view the evidence in the light most favorable to affirming it, *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007), and will not disturb the ruling if there is reasonable evidence in the record to support it, *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). We need only find one statutory ground supported by the evidence to sustain the court's ruling. *See Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, ¶ 5 (App. 2017).

¶3 In March 2017, E.K.'s paternal grandparents filed a dependency petition alleging Angela and E.K.'s father, Cody K., had been

¹The juvenile court also terminated the rights of Cody K., the child's father. Cody is not a party to this appeal; this court dismissed his appeal after his counsel filed an affidavit pursuant to Rule 106(G), Ariz. R. P. Juv. Ct., avowing he had reviewed the record and had found no non-frivolous issues to raise on appeal. *Cody K. v. Dep't of Child Safety*, No. 2 CA-JV 2019-0095 (Ariz. App. Sept. 18, 2019) (order).

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engaging in domestic violence and were abusing drugs and alcohol. The Department of Child Safety (DCS) filed a substituted petition in April, followed by an amended petition, adding to the existing allegations that Angela and Cody were unable to provide for E.K. due to a lack of permanent housing and stable employment. E.K. was placed with the paternal grandparents and remained there throughout the dependency.

¶4 The juvenile court adjudicated E.K. dependent in May 2017, after the parents admitted the allegations in an amended petition. Angela admitted she had failed to take prescribed anxiety medication, used marijuana without a registry identification card,² which she did not obtain until just days after E.K. was removed from the home in April, she was unemployed, and she had been arrested for domestic violence. DCS provided the family with multiple services designed to reunify them, including case plan management, Child and Family Team meetings, Adult Recovery Team meetings, supervised visitation and parenting time, parent aide instruction with specific instruction for E.K. (in light of his Autism Spectrum Disorder diagnosis), individual therapy, couples counseling, Healthy Relationships group counseling, drug testing, psychological evaluation, and employment support services. Angela participated in services designed to address her illegal drug use, mental health issues, and unstable housing and employment. She consistently claimed she used medical marijuana, prescribed for recurring headaches, to treat her depression and anxiety, even though the prescriber had informed her it was not a recognized treatment for these conditions.

¶5 After a dependency review hearing in October 2018, the juvenile court changed the case plan from reunification to severance and adoption, finding the parents were “minimally and partially in compliance with their case plans.” DCS filed a Motion for Termination of Parent-Child Relationship, which it amended twice. In July 2019, after several days of hearings between January and May 2019, the court terminated the parents’ rights in a detailed under-advisement ruling. The court found, among other things, E.K. has significant special needs due to developmental delays and the diagnosis of Autism Spectrum Disorder. The court reviewed with specificity the evidence regarding Angela’s inability to care for E.K., including the results of a psychological evaluation and her history of anxiety, depression, and schizoaffective disorder, and it concluded DCS had sustained its burden as to two grounds for severing her parental rights,

²Commonly referred to as a “medical marijuana card.”

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neglect and time in court-ordered care. The court further found termination of the parents' rights was in E.K.'s best interests. This appeal followed.

¶6 A parent's rights may be terminated pursuant to § 8-533(B)(8)(c) if clear and convincing evidence shows the child has been in court-ordered care for fifteen months or longer, "the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services," the parent has not been able to remedy the circumstances that caused the child to remain out of the home, "and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." Angela argues there was "[n]o evidence" she failed to remedy the circumstances that resulted in E.K.'s continued placement out of the home, she is unlikely to be able to parent him in the near future, and DCS made reasonable efforts to reunify her with him. She contends the ruling "is replete with virtually all negative statements about" her, arguing the juvenile court "[l]eft out" positive evidence regarding her participation in services and the "excellent progress she made in rehabilitation." She claims the court only relied on the biased information provided on behalf of DCS, including reports that were incomplete because they did not contain information about how she had benefitted from the services provided. And, she argues, there was no evidence her use of marijuana, which she claims was lawful under the Arizona Medical Marijuana Act, *see* A.R.S. §§ 36-2801 through 36-2819, impedes her ability to safely parent E.K.

¶7 Evidence that Angela had failed to remedy the circumstances resulting in E.K.'s continued placement out of the home included evidence regarding E.K.'s significant special needs and Angela's inability to meet those needs. Around the time E.K. was removed from the home, there were already concerns he was developmentally delayed. He was enrolled with the Division of Developmental Disabilities (DDD) for various services in August 2017, and by December, there were concerns he had Autism Spectrum Disorder. He was definitively diagnosed in December 2018. The evidence established E.K. requires a high level of engagement and structure, and the schedule of services necessary to address his special needs is demanding. He requires assistance with eating, transitions are particularly difficult for him, and disruption of his schedule is detrimental.

¶8 Citing to and summarizing specific supportive evidence, the juvenile court found Angela had not benefitted from the services DCS had provided and she was unable or unwilling to meet E.K.'s special needs. That evidence supported the court's finding that neither Angela nor Cody

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fully comprehended those needs and they were incapable of or unwilling to provide him with the supervision, food, shelter, and medical care he required, thereby posing “an unreasonable risk of harm to [his] health and welfare.” The court found Angela could not “set aside her own need (or wants as it may be applied to her chronic marijuana use) in favor of” her child and she lacked the skills to take care of E.K. The court also found Angela had not “been able to adequately resolve or treat her lack of emotional stability caused by anxiety, depression or her recently disclosed Schizoaffective Disorder,” and that she was “unwilling or unable to articulate an appropriate safety plan to protect [E.K.] from her use of marijuana.”

¶9 Again referring to specific exhibits and testimony, including Angela’s own testimony, the juvenile court found DCS had sustained its burden of establishing by clear and convincing evidence that Angela had “refused to engage and benefit from the numerous services offered.” The court added, “She has refused to take advantage of special instruction for parents of autistic children. She has refused to acknowledge the danger to [him] of her marijuana use and has not been able to provide a reasonably protective safety plan for a mental health crisis.” The court stated Angela had ignored dangers of her mental health diagnoses, refused appropriate treatment, and self-medicated with marijuana with unknown frequency and dosage.

¶10 The portions of the record the juvenile court cites to in its ruling, and other evidence in the record, supports these findings. The evidence established Angela engaged in chronic marijuana use for years, including before she obtained a registry identification card. Angela claimed she used marijuana every day to alleviate headaches, rather than over-the-counter pain relievers, but the headaches apparently had increased over time, requiring more frequent use of marijuana. She also claimed she used it for her depression and anxiety, even though she knew it was not recognized as a treatment for these conditions.

¶11 Dee Winsky, Ph.D., who evaluated Angela in February 2019, concluded Angela’s mood disorder, which includes depression and anxiety, and her previously diagnosed schizoaffective disorder, are likely to affect her ability to parent, stating, she “likely does not have the ability to meet [E.K.’s] special needs and she certainly would need specialized parenting education in order to learn how to parent a child on the Autism Spectrum Disorder.” She opined Angela had not “obtain[ed] minimally adequate parenting skills,” noting the difficulty of caring for a child with

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autism, and concluding that Angela would likely not be able to make “significant changes” in the future. And she testified at the severance hearing that, based on Angela’s lengthy history of marijuana use and the amount she used daily, she has demonstrated a dependency rather than just abuse. Winsky testified it was unlikely marijuana helped Angela’s anxiety, and could worsen her depression. And Winsky reported that although Angela was taking Risperdal for the schizoaffective disorder, she had refused to take prescribed medications to address the anxiety and depression.

¶12 The evidence also supported the juvenile court’s finding that Angela had not fully availed herself of services that were designed to help her address E.K.’s special needs. For example, in 2018, she was offered a parent-child relationship assessment to help her identify areas that were of concern that had a direct impact on her ability to care for E.K. She did not attend the initial assessment, claiming she lacked transportation, could not find the money for the bus fare of \$1.75, and had not thought about asking for a bus pass. She had stopped engaging in individual therapy until shortly before the final day of the severance hearing. Additionally, as DCS points out, in July 2018, before E.K.’s diagnosis was confirmed, DCS offered Angela a bus pass so she could attend a specialized class for parents whose children are developmentally delayed or autistic. Angela did not attend, claiming she was too busy, and did not try to enroll until May 2019, which was the week before the last day of the severance hearing.

¶13 Although DCS had encouraged Angela to attend E.K.’s appointments, she only attended two sessions of the assessment that resulted in the diagnosis in December 2018. By the time of the severance hearing, there was evidence that Angela had only a superficial understanding of E.K.’s condition, the services he required, and the rigorous schedule of services he was receiving.

¶14 Angela’s own testimony, some of which the juvenile court noted in its ruling, further supports the court’s findings. She testified she could immediately stop using marijuana, and confirmed she understood “marijuana use [was] one of the big barriers to reunifying” with E.K. But when asked why she had not stopped, she testified that she was “trying to prove a point.” She added, “Not trying to prove a point, but like I’m trying to make a statement not just to myself, but to everybody around me involved, that I can still be a parent and still be able to do what I need to do.” Angela insisted she could care for E.K., even if she was “under the influence of marijuana.” When asked whether she thought making this

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point was worth risking the loss of her parental rights she responded, "It's already there We're already here. So, we're already at the end," confirming she understood that and was "sorry."

¶15 Angela testified, further, that she understood consistently smoking marijuana might be a danger to E.K. while in her care but insisted she could keep him safe nevertheless. When asked whether she might want to stop smoking marijuana in a year or two, she responded, "I do, because I want to get into med school." Confirming again that she understood her parental rights were in jeopardy, she said she wanted to continue smoking marijuana. Angela insisted she had a safety plan for dealing with a mental health crisis, but she did not know where the plan was and could not recall what was in it. Even with the assistance of a therapist, she could not develop an adequate safety plan to parent E.K. while using marijuana every day.

¶16 Angela is correct that the record contains evidence that shows she participated in certain services. She was partially compliant with the case plan, and arguably there was evidence she had derived some benefit from those services. But it was for the juvenile court to resolve any conflicts in the evidence. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (2002); *see also Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004) (juvenile court in "best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts"). The court resolved those conflicts by finding Angela had not benefitted from the services, a finding the court made in the context of the additional finding that Angela had not progressed to the point where it was safe to return E.K. to her custody. Thus, placed in its proper context, the finding that she had not benefitted is supported by reasonable evidence.

¶17 In a related claim, Angela asserts that the juvenile court's ruling reflects that it did not consider evidence that was favorable to her and relied on biased and incomplete reports. First, we presume the court considered the evidence before it, including evidence favorable to Angela, even though the court did not specifically refer to that evidence in its ruling. *See Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 18 (App. 2004) (trial court presumed to have considered all evidence before it).

¶18 Second, the juvenile court was well aware of Angela's contention that the reports were incomplete and biased. Her counsel brought this concern to the court's attention on the first day of the severance hearing, which was combined with a dependency review. In connection

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with the issue of Angela's use of medical marijuana, her counsel stated that "the court reports . . . are particularly one sided. I have talked about that before in these cases. If you read this court report you would not know, unless the Court remembers, that my client finished her substance abuse class in August of last year." Her counsel pointed out other programs and services Angela had completed, and emphasized some of the positive information the parent aide had said about her. She objected to the court's finding that DCS had made reasonable efforts to reunify Angela with E.K., claiming they were "picking out . . . minutia[e]," complaining the reports did not reflect the maternal grandmother was available to provide a safety plan.

¶19 Acknowledging and responding to counsel's comments and concerns, the juvenile court made clear it would base its decision as to any differences of opinion on the evidence to be presented at the severance hearing, including the examination of witnesses. This claim of unfairness and bias was raised again at the end of the hearing. Angela's counsel was questioning the case worker about information that had not been included in the reports. When the court asked counsel about the purpose of this line of questioning, she explained she was asking these questions because it related to the issue of DCS's diligent efforts. The court stated it was relying on the testimony over "the last six or seven days." Thus, the court's comments make clear it was aware of Angela's claim that DCS was presenting one-sided information and that it would resolve the conflicts in the evidence, which is within the province of the court as the trier of fact.

¶20 Angela also argues that the ruling and the questioning of Angela during the hearing reflect that the juvenile court and DCS "have not fully acknowledged that a medical marijuana card allows the legitimate use of marijuana for legitimate medical conditions." She relies on § 36-2813(D), which provides that no person may be denied custody or visitation or parenting time for conduct allowed under the statute "unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence." Angela insists that her use of marijuana did not create an unreasonable danger to E.K. and claims she had prepared two safety plans with the help of her therapist but the caseworker rejected them. She accuses the court of having "discriminated against" her, which is a violation of the statute. This accusation is unfounded. The court expressly noted that Angela had stated she was using marijuana for depression and anxiety, neither of which is a "qualifying health condition[]" for medical marijuana. She also challenges the court's related finding that she refused to take prescribed medication

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for her mental health issues, because the evidence established she was taking Risperdal, prescribed by a psychiatrist for schizoaffective disorder, albeit together with medical marijuana for her symptoms.

¶21 Again, it was for the juvenile court to weigh the evidence and resolve any conflicts. *See Jesus M.*, 203 Ariz. 278, ¶ 12; *see also Oscar O.*, 209 Ariz. 332, ¶ 4. We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to its factual findings because it “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *See Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14.

¶22 Based on the record before us, we cannot say the juvenile court abused its discretion in finding DCS sustained its burden of proving length of time in court-ordered care as a ground for termination. *See Jordan C.*, 223 Ariz. 86, ¶ 18. We need only find one statutory ground for terminating a parent’s rights is supported by the evidence in order to sustain the juvenile court’s ruling. *See Crystal E.*, 241 Ariz. 576, ¶ 5. We therefore need not address whether there was sufficient evidence to support the termination of her rights on the ground of neglect.

¶23 Finally, Angela contends the juvenile court abused its discretion in finding termination of her parental rights was in E.K.’s best interests. To establish severance of a parent’s rights is in a child’s best interests, a preponderance of the evidence must show the child would benefit from severance of the parent-child relationship or be harmed by continuing the relationship. *See Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, ¶ 13 (2018); *see also A.R. v. Dep’t of Child Safety*, 246 Ariz. 402, ¶ 8 (App. 2019). Once a statutory ground has been found, the parent’s unfitness has been established, and the parent’s “diluted” interest must be balanced “against the independent and often adverse interests of the child in a safe and stable home life.” *See Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 15 (2016) (quoting *Kent K.*, 210 Ariz. 279, ¶ 35).

¶24 The case manager testified termination of the parents’ rights would benefit E.K., enabling him to continue to “make progress cognitively and emotionally.” She explained he suffers from separation anxiety at times, not wanting to leave his grandparents, and “all of the differences in his life and all of the changes in placement and going to visitation . . . [have] affected him.” She stated he deserves permanency and stability, which will encourage continued growth and will allow him to be adopted by his grandparents. She testified further that it would be detrimental to E.K. not

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to terminate his parents' rights because at the time of the severance hearing, he had already been in care for almost two years. She believed that permanency would be delayed because neither parent would be able to safely and appropriately parent E.K. within a reasonable period of time.

¶25 Angela argues the juvenile court did not consider the fact that she had been rehabilitated, as required by *Alma S.*, 245 Ariz. 146, ¶ 15. She contends the court did not mention in the ruling that there is a bond between her and E.K., nor does the order reflect the court considered any factors other than those that relate to the statutory grounds it found DCS had established. By citing the applicable law and the correct standard for determining a child's best interests, the court made clear it had considered appropriate factors and had relied on evidence it had weighed in the exercise of its discretion. The court stated that the paternal grandparents want to adopt E.K. and are able to meet all of his "advanced needs," giving him the "stability and permanency he was lacking in" the care of his parents. The court added, "It would be detrimental for [him] to have to wait an indeterminate amount of time for his parents to take care of their problems, become healthy themselves, re-establish whatever bonds they had with him before the removal, and care for him."

¶26 It was appropriate for the juvenile court to consider the fact that the paternal grandparents wish to adopt E.K. and that they are able to meet his special needs and follow the demanding schedule for services he requires. See *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, ¶ 11 (App. 2008) (that child is adoptable and termination would facilitate adoption is benefit that can support finding of best interests). Again, we presume the juvenile court considered the evidence that was before it, including evidence that Angela had benefitted from services to any degree. See *Fuentes*, 209 Ariz. 51, ¶ 18. Moreover, as DCS correctly observes, the court had already found Angela had not benefitted from these services. The court was well aware of any evidence establishing a bond existed between her and E.K. Moreover, as DCS also points out, the evidence did not establish Angela and E.K. had "a close bond," as Angela claims. The court necessarily weighed whatever benefit E.K. derived from that bond against his need for stability and the fact his current placement was meeting all of his needs. And the fact that there may have been such a bond is only one factor for the court to consider and "is not dispositive in addressing best interests." *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, ¶ 12 (App. 2016). Angela has not sustained her burden of establishing the court abused its discretion in finding termination of her parental rights was in E.K.'s best interests. See *Denise R.*, 221 Ariz. 92, ¶ 10.

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¶27 For the reasons stated, we affirm the juvenile court's order terminating Angela's parental rights to E.K.